

APPEAL NO. 170828  
FILED JUNE 6, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 28, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the appellant/cross-respondent (claimant) did not sustain a compensable injury on (date of injury); (2) the respondent/cross-appellant (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001; (3) the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under Community Health Development, Inc.; and (4) because the claimant did not sustain a compensable injury, there is no disability.

The claimant appealed the hearing officer's determinations arguing that the same are contrary to the preponderance of the evidence. The carrier responded, urging affirmance of the hearing officer's determinations regarding compensability and timely reporting of the claimed injury.

Conditioned upon a timely appeal having been filed by the claimant, the carrier appealed the hearing officer's determination that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under Community Health Development, Inc. The appeal file does not contain a response from the claimant to the carrier's conditional appeal.

**DECISION**

Affirmed as reformed.

The claimant, a truck driver, testified that he injured his neck and back on (date of injury), while manipulating a heavy mail container onto a trailer.

**TIMELY REPORTING OF INJURY**

The hearing officer's determination that the carrier is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001 is supported by sufficient evidence and is affirmed.

**ELECTION OF REMEDIES**

The hearing officer's determination that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under Community Health Development, Inc. is supported by sufficient evidence and is affirmed.

## **COMPENSABILITY**

In evidence is the Benefit Review Conference (BRC) Report which lists the following compensability issue:

Did the [c]laimant sustain a compensable injury on (date)?

At the CCH the parties initially agreed to the form of the compensability issue, as stated on the BRC report and entered into stipulations regarding the identity of the claimant's employer and the employer's workers' compensation insurance carrier as of (date of injury); however, during the proceeding, the parties advised the hearing officer that the correct date of the claimed injury was actually (date of injury), rather than (date of injury), and that the parties had so agreed at the BRC. The hearing officer responded, acknowledging that each time she had mentioned June 19 to that point in the hearing, the correct date which should have been recited was (date of injury). Nevertheless, the hearing officer's decision lists the compensability issue exactly as stated in the BRC report and the parties' stipulations as reflected by Findings of Fact No. 1.B and 1.C reflect a claimed injury date of (date of injury). We therefore reform Finding of Fact No. 1.B. to read: On (date of injury), the claimant was the employee of Southern Mail Service, Inc., employer. We further reform Finding of Fact No. 1.C. to read: On (date of injury), the employer provided workers' compensation insurance through National Interstate Insurance Company, carrier.

In her Finding of Fact No. 3, the hearing officer stated:

[The] [c]laimant did not sustain damage or harm to the physical structure of his body in the course and scope of his employment on (date of injury).

In her Conclusion of Law No. 3 and in the Decision section of her Decision and Order, the hearing officer stated:

[The] [c]laimant did not sustain a compensable injury on (date of injury).

In the first paragraph of her Decision and Order, the hearing officer stated:

[The] [c]laimant did not sustain a compensable injury on (date of injury)[.]

We note further that the hearing officer refers to the date of the claimed injury throughout the Discussion section of the Decision and Order as (date of injury).

The hearing officer's determination regarding compensability is supported by sufficient evidence; however, because the date of the claimed injury, as agreed by the parties, was (date of injury) rather than (date of injury), we reform Conclusion of Law No. 3, the Decision and the first paragraph of the Decision and Order to conform to the evidence and to provide that the claimant did not sustain a compensable injury on (date of injury). We further reform Finding of Fact No. 3 to provide that the claimant did not sustain damage or harm to the physical structure of his body in the course and scope of his employment on (date of injury). The hearing officer's determination, as reformed, that the claimant did not sustain a compensable injury on (date of injury), being supported by sufficient evidence, is affirmed.

### **DISABILITY**

The hearing officer's determination that the claimant had no disability is supported by sufficient evidence and is affirmed.

### **SUMMARY**

We affirm as reformed the hearing officer's determination that the claimant did not sustain a compensable injury on (date of injury).

We affirm the hearing officer's determination that the carrier is relieved from liability under Section 409.002 because of the claimant's failure to timely notify his employer pursuant to Section 409.001.

We affirm the hearing officer's determination that the claimant is not barred from pursuing Texas workers' compensation benefits because of an election to receive benefits under Community Health Development, Inc.

We affirm the hearing officer's determination that because there is no compensable injury, there is no disability.

The true corporate name of the insurance carrier is **NATIONAL INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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K. Eugene kraft  
Appeals Judge

CONCUR:

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Carisa Space-Beam  
Appeals Judge

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Margaret L. Turner  
Appeals Judge